



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1996

Mr. Claud H. Drinnen
Assistant City Attorney
City of Amarillo
P. O. Box 1971
Amarillo, Texas 79105-1971

OR96-2037

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101731.

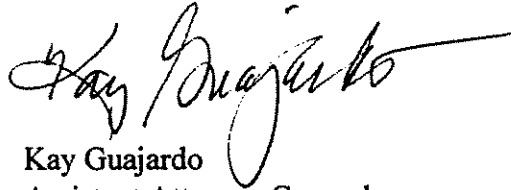
The City of Amarillo (the "city") received requests for police reports naming certain individuals as a suspect, witness or complainant. You assert that the requested information is protected from disclosure based on section 552.101 of the Government Code, which excepts from required public disclosure information that is deemed confidential by law. You assert that the release of the requested information will violate the privacy rights of the named individuals.

We asked you to submit the requested information or a representative sample of the requested information, but you failed to do so. Pursuant to Government Code section 552.303, your failure to respond to our notification results in the presumption that the requested information is public information. Third party privacy interests overcome the presumption of openness. However, the privacy concerns for the release of criminal history information do not arise when the named individual is not the arrestee. The requestor also seeks reports in which the individual is a witness or complainant. Because you did not submit the requested information, we cannot know whether the city possesses information that is responsive to the request that does not implicate a third party's privacy interests. Therefore, to the extent that the city possesses offense reports in which the named individuals are complainants or witnesses, the city must release the requested information. In the future, we ask that the city submit copies of the requested information even when the request appears to involve a request for criminal history information.

We agree that the release of a compilation of all offense reports relating to the arrest of the named individuals would implicate those individuals' privacy rights. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (release of arrestee's personal history and arrest records would violate privacy rights); *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and Privacy Act of 1974, 5 U.S.C. § 552a). Accordingly, the city must not release such a compilation. Gov't Code § 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 101731

cc: Ms. Mary Mitchell
Legal Assistant to Kelly Utsinger
Underwood, Wilson, Berry, Stein & Johnson, P.C.
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